IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO.8265 OF 2006

Shantilal Manakchand Lalwani ..Petitioner.

V/s.

Income Tax Officer & Ors. ..Respondents.

Mr.N.R.Bubna for petitioner.

Mr.A.N.Kotangale for respondents.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 29TH JANUARY, 2007.

P.C. :-

Heard learned counsel for the petitioner and the respondents.. Rule, returnable forthwith. By consent of the parties petition is taken up for final hearing.

2. By this petition, the petitioner is challenging three orders for the assessment years 1999-00, 2002-01 and 2001-02 and all the aforesaid three orders were passed on 6th November, 2006 and they were served on 22nd November, 2006. Thereafter, it appears that on 14th December, 2006 the reassessment orders were passed and the said reassessment orders were served on the petitioner on 18th December, 2006.

3. These orders have been passed under section 147 and 148 of the Income Tax Act, 1961. The petitioner has received certain interest amount

pursuant to Court orders. According to the petitioner, the said interest is not taxable. The petitioner's objection with regard to reopening of the assessments for the aforesaid periods were rejected. Learned counsel for the petitioner also brought to our notice the Judgment our Court in **Commissioner of Income Tax V/s. Abdul Manan Shah Mohammed 248 (2001) I.T.R. 614.** The said Judgment has not been considered by the Tax Recovery Officer. The Tax Recovery Officer has to consider the amendment brought into section 45 (5)(c) which was introduced from 1st April, 2004.

4. Under these circumstances, we quash and set aside the aforesaid three impugned orders dated 6th November, 2006 and the reassement orders dated 18th December, 2006 and remit the matter back to the Tax Recovery Officer for a fresh consideration.

5. The Tax Recovery Officer shall dispose of the same within a period of 4 weeks from the receipt of order of this Court. In the event the order were to be adverse to the petitioner, the order shall not be given effect to for a period of 4 weeks thereafter, from the date of service of the order on the petitioner.

6. Rule is made absolute in above terms with no order as to costs.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)